

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Into
Implementation of Senate Bill 669, Regarding The
Deaf and Disabled Telecommunications Program.

Rulemaking 00-05-001
(Filed May 4, 2000)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision grants the California Association of the Deaf (CAD) an award of \$28,032.52 in compensation for contributions to Decision (D.) 01-07-023, as modified by D.02-01-018.

1. Background

The Commission in D.01-07-023 implemented the portion of Senate Bill 669 relating to California's Deaf and Disabled Telecommunications Program (DDTP), then modified the decision's committee membership and quorum requirements in D.02-01-018.

CAD attended a prehearing conference in San Francisco on June 23, 2000, participated in a workshop on October 2, 2000, monitored the public participation hearings, filed joint comments with the California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc., and filed reply comments on the draft decision and joint comments on an alternative draft decision. Additionally, CAD filed a response to a petition for modification that resulted in D.02-01-018. CAD's request for compensation for its contributions to these decisions is unopposed.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file an NOI within 30 days of the prehearing conference or by a date established by the Commission. Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. NOI to Claim Compensation

CAD filed an NOI to claim compensation in this proceeding as required by § 1804(a). The assigned Administrative Law Judge (ALJ) issued a ruling on August 14, 2000, finding CAD eligible for compensation provided that the agency filed bylaws showing that it represented the interests of residential ratepayers. CAD also was required to provide evidence showing that costs of participation in the proceeding were justified by the economic interests of CAD members. CAD filed bylaws on August 22, 2000, that showed the organization's representation of residential ratepayers. CAD also showed that effective representation in this proceeding would cause significant financial hardship for its members absent an award of intervenor compensation. We deem the NOI requirement to have been met.

4. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

Committee membership and voting power emerged as the primary issues that were considered and ruled upon in this proceeding. CAD argued for less involvement of Commission staff and telephone company representatives on the DDTP Administrative Committee. It also sought a majority membership of consumer representatives with particular representation for the deaf community. CAD focused on problems with the voting power of staff and telephone company representatives and urged adding a consumer representative of the

deaf-blind community and one from the speech-impaired community. The final decision removed the voting power from the Commission representative to the DDTP Administrative Committee as well as from the telephone company representatives to all committees. It also ordered the addition of two consumer members to the DDTP Administrative Committee, one representing the disabled community and one representing the speech-impaired community. CAD opposed adding members based solely on business expertise or solely to represent seniors. Neither proposal was adopted in the final decision.

CAD took the position that there was inadequate deaf consumer representation in all the committees and specifically urged addition of two consumer representatives to the Equipment Advisory Committee (EPAC). While the final decision did not add additional consumer members to the EPAC or the California Relay Service Advisory Committee, the removal of voting power of the telephone company representative enhanced the voting power of members representing hearing-impaired consumers and other consumer groups.

CAD also argued for restructuring the two advisory committees into one. The Commission did not adopt that suggestion, finding that the record was inadequate to make so sweeping a change.

CAD urged that SB 669 quorum and voting requirements should be interpreted to refer only to members with voting power, and that therefore a quorum should be a majority of the committee's voting members and that a majority of those voting members present would be needed to pass any measure. The final decision required a quorum to be the majority of all members (both voting and non-voting) and a majority of all voting members to pass any measure.

CAD also protested Sprint's delay in providing notice of the public participation hearings and called attention to complaints about sign language interpreting at one of the hearings. The Commission included discussion of these problems in its final decision and levied a fine on Sprint.

CAD states that it spent considerable time presenting its views on staff requirements for the DDTP, along with outreach and technology studies to be undertaken by the DDTP. While the Commission's decision stated that it was sympathetic to these concerns, the decision deferred action on these matters pending further guidance from the Legislature.

CAD timely filed its request for compensation,¹ supplementing the request on January 24, 2002, for compensation related to D.02-01-018. That decision modified D.01-07-023 to relax the quorum requirements and broaden telephone company memberships. CAD supported these recommendations.

We find that CAD has demonstrated that it made a substantial contribution to the final decision in this proceeding, since the Commission adopted several of CAD's recommendations in whole or in part. For other issues, CAD's participation has supplemented or contributed to the presentations of other parties.

5. The Reasonableness of Requested Compensation

CAD requests compensation in the amount of \$32,469.25. Documentation attached to the request shows the following compilations:

¹ We grant CAD's motion to accept the filing two days after September 11, 2001, because of the events of that day.

J. Kendrick Kresse:

95.19 hours @ \$295	\$28,081.05
3.55 hours @ \$147.50 (travel)	523.63
11.2 hours @ \$147.50 (comp. request)	1,652.00

Other:

2 hours @ \$85 (paralegal)	\$170.00
Photocopying, postage	110.32

Kresse:

5.3 hours @ \$295 (Pet. for Mod.)	\$1,563.50
2.5 hours @ \$147.50 (comp. request)	\$368.75

Total	<u>\$32,469.25</u>
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Broadly speaking, and with exceptions noted below, we find that the requested compensation is reasonable in relation to CAD's contributions to our decisions. As in most rulemakings, precise quantification of the value of CAD's contributions is not possible, but a qualitative assessment is possible. First, we find that hundreds of thousands of Californians are deaf or disabled within the parameters of the program with which this proceeding is concerned. Second, we find great social value in enabling deaf or disabled Californians to fully utilize our telecommunications facilities. CAD's contributions thus affect many Californians in ways that can ultimately enhance their access to goods and services and their participation in society generally. On this basis, we consider CAD's time and effort in this proceeding was productive. (*See* § 1801.3(f).)

5.1 Hours Claimed

CAD has submitted detailed records of time spent on the proceeding. Spreadsheet summaries of 2000 and 2001 hours and direct expenses are set forth in an attachment to the compensation request. CAD's time is separated into

professional hours, travel and compensation request hours, as shown on the spreadsheets. Compensation at half the professional rate is requested for travel time and for preparation of the compensation requests. CAD also appropriately breaks down time spent on various issues and activities.

While CAD prevailed on or contributed to a number of issues in this proceeding, we note also that it did not prevail on certain matters, including the restructuring of the advisory committees and the launch of certain outreach and technology studies by the DDTP. Based on the spreadsheet summaries of time spent, we believe that it is reasonable to reduce the number of hours for which compensation is claimed by 10 hours to compensate for work that did not contribute to the final decision. This reduces the total number of hours claimed from 100.49 to 90.49. With this change, we find that the compilation of time expended on this proceeding to be reasonable.

5.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the “market rate paid to persons of comparable training and experience who offer similar services.” CAD requests Commission approval of an hourly rate of \$295 for Kresse’s professional work. The request notes that the most recent rate accorded Kresse was \$280 in a federal court case in 1999. It notes that Kresse has represented deaf organizations before the Commission for 20 years. It states that the most recent compilation by the Public Advisor’s Office shows hourly rates in the range of \$275-\$290 for work performed in 1998 by more senior attorneys, and it states that hourly rates for senior attorneys in 2000 and 2001 presumably would exceed \$300.

We will base our award in this proceeding on the \$280 rate previously authorized in the federal court proceeding. As CAD notes, this rate is in line

with the higher range of rates granted to senior attorneys in Commission proceedings. In light of current conditions prevailing in the economy, including the legal section, CAD's presumption of likely higher rates in the years 2000 and 2001 is not convincing. In the absence of any other supporting data, we are not persuaded by CAD's showing that an increase in Kresse's hourly rate is justified at this time. With the adjustment of Kresse's hourly rate, the amount of compensation awarded CAD is reduced by \$1,636.73 (i.e., to \$30,832.52) from the amount requested. We approve the requested paralegal rate of \$85 per hour.

5.3 Other Costs

CAD claims \$110.32 for costs relating to photocopying and postage, a reasonable sum that we adopt here.

6. Award

We award CAD \$28,032.52 for contributions to D.01-07-023, as modified by D.02-01-018. We note that this proceeding, Rulemaking 00-05-001, did not include named respondents. Therefore, the entire award granted today should be paid from the intervenor compensation program fund, as described in D.00-01-020. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate). Interest shall be paid on \$26,080.21 of the award commencing on November 26, 2001, the 75th day after CAD filed its initial compensation request. Interest shall be paid on \$1,952.31 of the award commencing on April 9, 2002, the 75th day after CAD filed its supplemental request for compensation.

7. Waiver of Comment Period

This is a compensation matter. Accordingly, pursuant to Pub. Util. Code § 311(g)(3) and Rule 77.7(f)(6) of the Rules of Practice and Procedure, the otherwise applicable 30-day review and comment period is being waived.

Findings of Fact

1. CAD timely requested compensation for contributions to D.01-07-023, as modified by D.02-01-018, as set forth herein.

2. CAD in its request has justified an hourly rate of \$280 for the professional work of its attorney and an hourly rate of \$85 for the professional work of its paralegal.

3. An increase in the attorney's hourly rates to \$295 has not been justified.

4. A reduction of hours claimed by 10 hours is justified.

5. The miscellaneous costs incurred by CAD in this proceeding are reasonable.

Conclusions of Law

1. CAD has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.

2. CAD should be awarded \$28,032.52 for contributions to D.01-07-023, as modified by D.02-01-018.

3. This order should be effective today.

O R D E R

IT IS ORDERED that:

1. The California Association of the Deaf (CAD) is awarded \$28,032.52 as set forth herein for substantial contributions to Decision (D.) 01-07-023, as modified by D.02-01-018.

2. The Executive Director shall authorize payment from the intervenor compensation program fund, as described in D.00-01-020, within 30 days of this order. Interest shall be paid on \$26,080.21 of the award commencing on November 26, 2001, the 75th day after CAD filed its initial compensation request.

Interest shall be paid on \$1,952.31 of the award commencing on April 9, 2002, the 75th day after CAD filed its supplemental request for compensation. Interest shall be calculated at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.